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June 8, 2011

To Interested Parties

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt
Revised Amendments to California Code of Regulations, Title 18,
Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and
Section 1598, *Motor Vehicle and Aircraft Fuels***

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, has proposed to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the proposed amendments to Regulations 1533.2 and 1598 published in the California Notice Register, on March 25, 2011 (Cal. Reg. Notice Register 2011, No. 12-Z), explained that:

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC

sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

Assembly Bill No. 105

On March 24, 2011, the day before the publication of the Board's Notice of Proposed Regulatory Action, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of Assembly Bill No. (AB) 105 (Stats. 2011, ch. 6), in order to comply with the requirements of Proposition 26. However, when the Legislature re-enacted RTC sections 6051.8 and 6201.8, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

In addition, the Legislature also re-enacted RTC section 60050 as part of AB 105 and revised subdivision (b) so that the rate of the diesel fuel excise tax is reduced to 13 cents per gallon, instead of 13.6 cents per gallon as provide by AB X8 6, effective July 1, 2011.

Chief Counsel Memorandum

Board staff prepared a Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105. The Chief Counsel Memorandum was distributed to the Board Members for consideration at the May 25, 2011, public hearing, posted on the Board's website at www.boe.ca.gov, and made available to the public.

The Chief Counsel Memorandum explained the changes AB 105 made to RTC sections 6051.8 and 6201.8 and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 so that: (A) the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; and (B) the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes.

The Chief Counsel Memorandum explained the change that AB 105 made to the rate of the diesel fuel excise tax imposed by RTC section 60050, effective July 1, 2011, and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 so that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105.

The Chief Counsel Memorandum also recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 to clarify that the additional use tax imposed by RTC section 6201.8 applies to the "storage, use, or other consumption" of diesel fuel and to better conform the text of the exemption certificate to be used in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c) providing that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

Finally, the Chief Counsel Memorandum recommended that the Board authorize staff to make other nonsubstantial and solely grammatical changes to the original text of the proposed amendments to Regulation 1598 in order to incorporate the sufficiently related changes, delete

unnecessary language, and correct the spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k).

May 25, 2011, Public Hearing

During the public hearing on May 25, 2011, the Board Members unanimously voted to authorize staff to make all of the changes to the original text of the proposed amendments to Regulation 1533.2 and 1598 recommended in the Chief Counsel Memorandum and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c). No interested parties submitted written comments to the Board or appeared at the public hearing to make oral comments regarding the original text of the proposed amendments to Regulation 1533.2 and 1598 or the changes recommended in the Chief Counsel Memorandum.

The objective of the proposed amendments to Regulation 1533.2 is still to revise the text of the regulation to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments to Regulation 1598 is still to revise the text of the regulation to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011, and to prescribe the content of the exemption certificate required by RTC section 6357.3.

Nonsubstantial and Solely Grammatical Changes Omitted from the Original Text

The original text of the proposed amendments to Regulation 1598 renumbered current subdivisions (e) through (i) as subdivisions (f) through (j), respectively. During its February 23, 2011, meeting, the Board authorized staff to make additional nonsubstantial changes to Regulation 1598, subdivisions (b)(1) and (c)(2)(D) through (F), which are not being renumbered, and subdivisions (h)(1), (i), (i)(2), (j), and (j)(1), which are proposed to be renumbered as subdivisions (i)(1), (j), (j)(2), (k) and (k)(1), in order to update the subdivisions' internal cross-references to subdivisions (h), (i), and (j) to refer to renumbered subdivisions (i), (j), and (k), respectively. During its February 23, 2011, meeting, the Board also authorized staff to make a solely grammatical change adding a comma after the word “diesel” in the first sentence of subdivision (i), which is proposed to be renumbered as subdivision (j). However, these nonsubstantial and solely grammatical changes were inadvertently omitted from the original text of the proposed amendments to Regulation 1598, and the Board is now including these changes with the changes to the original text of the proposed amendments to Regulation 1598 authorized by the Board on May 25, 2011.

Additional Comments Regarding Changes

Enclosed are revised underscore and strikeout versions of the text of the proposed amendments to Regulations 1533.2 and 1598 with the additional changes authorized on May 25, 2011, and the nonsubstantial and solely grammatical changes authorized on February 23, 2011. The text originally proposed to be deleted from and added to Regulations 1533.2 and 1598 is still shown in single strikeout and single underline, respectively. The deletions from and additions to the original text of the proposed amendments to Regulations 1533.2 and 1598 are shown in double strikeout and double underline, respectively.

In accordance with Government Code section 11346.8, subdivision (c), the revised versions of the proposed amendments are being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The Board will discuss and may potentially adopt the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during its July 26-28, 2011, Board meeting in Sacramento, California. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

Any interested person may appear during the Board's discussion of the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during the July 26-28, 2011, Board meeting and present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments for the Board's consideration. In addition, any interested person may also submit written comments regarding the Board's proposed adoption of the revised versions of the proposed amendments to Regulations 1533.2 and 1598. The written comment period closes at 9:30 a.m. on July 26, 2011, or as soon thereafter as the Board commences its discussion of the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during the July 26-28, 2011, Board meeting.

Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to adopt the revised versions of the proposed amendments to Regulations 1533.2 and 1598. Furthermore, any written comments received prior to the end of the written comment period must be responded to in the final statement of reasons required by Government Code section 11346.9.


Questions regarding the substance of the revised versions of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

June 8, 2011

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the July 26-28, 2011, Board meeting, inquiries concerning the proposed administrative action, and requests for notice of the July 26-28, 2011, Board meeting should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

Interested persons may also subscribe to receive notice of all the Board's meetings via email or the United States Postal Service on the Board's website at www.boe.ca.gov/agenda/.

Sincerely,


Diane G. Olson, Chief
Board Proceedings Division

DGO:bmh:reb

**Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1533.2**

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates

of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

(1) 7.12 percent for the period July 1, 2011, through June 30, 2012;

(2) 7.42 percent for the period July 1, 2012, through June 30, 2013;

(3) 7.19 percent for the period July 1, 2013, through June 30, 2014; and

(4) 7.00 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace.

A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that

meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) **Form of Partial Exemption Certificate.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) **Retention and Availability of Partial Exemption Certificates.** A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) **Good Faith.** A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) **Partial Exemption Certificate for Use Tax.** The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) **Improper Use of Partial Exemption.** Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) **Purchaser's Liability for the Payment of Sales Tax.**

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) **Records.** Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) **Operative Date.** This regulation is operative as of September 1, 2001.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6357.1, Revenue and Taxation Code.

**Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (k).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional ~~1.75 percent~~ state sales and use tax is imposed on the sales and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

(3) Exemptions and Exemption Certificates.

(A) An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the ~~1.75 Percent~~ Additional State Sales
and Use Tax Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

_____,

- ☐ is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax ~~imposed by Revenue and Taxation Code sections 6051.8 and 6201.8~~ because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108, ~~for the following reason:~~

OR

- ☐ is purchased by an exempt bus operator.

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax ~~imposed by Revenue and Taxation Code sections 6051.8 and 6201.8~~ because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the ~~diesel fuel~~ additional state sales and use taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional ~~1.75 percent~~ sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel

fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*184
State excise tax*353
Total	\$2.972

Sales tax reimbursement computed at 2 1/4% of \$2.972.....	.067
Total tax-included price per gallon.....	\$3.039

(B) Sales price per gallon of diesel fuel net of all taxes*	\$2.355
Federal excise tax*244
Total	\$2.599

Sales tax reimbursement computed at 9% of \$2.599.....	.234
State excise tax*136
Total tax-included price per gallon.....	\$2.9639

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision

(h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____, will be used in propelling aircraft: and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(ij) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ij)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (i)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(j) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (j)(1) may issue a certificate in substantially the form set forth in subdivision (j)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (j) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's

purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior ~~calendar~~calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the

Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.